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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1984

GORDON CAMPBELL, PETITIONER

V.

WASHINGTON STATE BAR ASSOCIATION,

RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Gordon Campbell,
petitioner
1631 Belmont Avenue
#208
Seattle, WA 98122

50pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the order of the court below given at the prebriefing conference by the conference attorney and affirmed by a single judge of the court below, directing that petitioner (appellant below) file appellant's brief on or before December 28, 1984 and that respondent (appellee below) file a motion for summary affirmance after appellant's brief is filed, violated petitioner's right to due process of law under the fifth amendment, U. S. Constitution, since said order involved a decision that petitioner's case presented no substantial issue which decision was given prior to the time petitioner had received a full and fair hearing regarding the issues of his case.

2. Whether petitioner's complaint in U. S. district court seeking a declaratory judgment adjudging that an attorney,

admitted to the practice of law in the state of Washington, whose application for employment to a financially qualified employer has been rejected by said employer, can, under the 14th amendment to the United States Constitution, sue said employer to obtain a job, thereby presenting the federal question whether a direct right of suit exists to enforce the right to work and earn a living under the 14th amendment (see Davis v. Passman (1979) 442 U. S. 228, 60 L. Ed.2d 846, 99 S. Ct. 2264), which complaint further alleges that petitioner is prevented from bringing the type of suit sought to be adjudged constitutional by a decision of the Washington state supreme court holding that such type suit is not maintainable which decision is administered by respondent, alleges a case or controversy between the parties.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1984

GORDON CAMPBELL, PETITIONER

V.

WASHINGTON STATE BAR ASSOCIATION,

RESPONDENT

Petitioner requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the ninth circuit entered March 11, 1985 summarily affirming the judgment of the United States district court for the western district of Washington entered September 12, 1984, dismissing plaintiff's complaint.

OPINIONS BELOW

No opinions of courts below were reported.

JURISDICTION

Jurisdiction of this court is invoked to review the judgment of the United States court of appeals for the ninth circuit rendered and entered on March 11, 1985. Jurisdiction of the court is invoked under 28 U. S. C. #1254(1) and 28 U. S. C. #2101(c).

CONSTITUTIONAL PROVISIONS

5th amendment, United States Constitution

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life and limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

14th amendment, United States Constitution

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner brought suit in U. S. District Court against respondent seeking a declaratory judgment adjudging that an attorney, admitted to the practice of law in the state of Washington, whose application for employment to a financially qualified employer has been rejected by said employer, can, under the 14th Amendment to the United States Constitution, sue said employer to obtain a job.

Respondent moved to dismiss petition-

er's complaint. The district court dismissed the complaint, holding that it did not allege a controversy between the parties.

Petitioner filed notice of appeal. On November 16, 1984, a prebriefing conference was held. As a result of the conference, an order was entered by the conference attorney directing that petitioner (appellant below) file appellant's brief on or before December 28, 1984 and that respondent (appellee below) file a motion for summary affirmance after appellant's brief is filed.

Petitioner filed a motion for reconsideration of the order on grounds that it denied petitioner due process of law since the order involved a decision that petitioner's case presented no substantial issue which decision was made prior to the time petitioner had received a full and fair hearing regarding the issues of his case.

The motion for reconsideration was

denied by a single judge of the court of appeals.

On March 11, 1985, the court of appeals summarily affirmed the judgment of the district court.

Since the sufficiency of petitioner's complaint for declaratory judgment is an issue presented for review, the allegations of said complaint are the facts relevant to said issue. The complaint reads as follows:

> "United States District Court,
> Western District of Washington
>
> Civil Action File Number C84 825V
>
> Gordon Campbell, plaintiff v.
> Washington State Bar Association,
> defendant
>
> Plaintiff's Complaint for
> Declaratory Judgment
>
> 1. The action arises under the 14th Amendment to the Constitution of the United States, Section 1 and under the Acts of June 25, 1948, ch. 646, 62 Stat. 930; July 25, 1958, Pub. L. 85-554, #1, 72 Stat. 415; Oct. 21, 1976, Pub. L. 94-574, #2, 90 Stat. 2721; Dec. 1, 1980, Pub. L. 96-486, #2(a), 94

Stat. 2369; U. S. C., Title 28, #1331 and under the Acts of June 25, 1948, ch. 646, 62 Stat. 964; May 24, 1949, ch. 139, #111, 63 Stat. 105; Aug. 28, 1954, ch. 1033, 68 Stat. 890; July 7, 1958, Pub. L. 85-508, #12(p), 72 Stat. 349; Oct. 4, 1976, Pub. L. 94-455, title XIII, #1306(b)(8), 90 Stat. 1719; Nov. 6, 1978, Pub. L. 95-598, title II, #249, 92 Stat. 2672; U. S. C., Title 28, #2201, as hereinafter more fully appears.

2. Plaintiff is a resident of Seattle, Washington and an inactive member of the Washington State Bar Association and a citizen of the United States.

3. Defendant is an agency of the state of Washington with principal offices in Seattle, Washington.

4. Plaintiff believes that an attorney, admitted to the practice of law in the state of Washington, whose application for employment to a financially qualified employer has been rejected by said employer, can, under the 14th Amendment to the United States Constitution, sue said employer to obtain the job.

5. Plaintiff is prevented from bringing the type of suit set forth in paragraph 4 above by a decision of the Washington state supreme court holding that such type suit is not maintainable.

6. Defendant administers the decision of the Washington supreme court referred to in paragraph 5 above.

Wherefore plaintiff demands that the court adjudge:

(1) That an attorney, admitted to

the practice of law in the state of Washington, whose application for employment to a financially qualified employer has been rejected by said employer, can, under the 14th Amendment to the United States Constitution, sue said employer to obtain the job.

Dated this 25th day of June, 1984.

s/Gordon Campbell

GORDON CAMPBELL
1631 Belmont Avenue
#208
Seattle, WA 98122"

REASONS FOR GRANTING THE WRIT

1. The order of the court below made at the prebriefing conference, directing that respondent (appellee below) file a motion for summary affirmance after appellant's brief is filed, violated petitioner's right to due process of law under the fifth amendment, U. S. Constitution.

On November 16, 1984, a prebriefing conference was held. Petitioner was present at the conference and respondent was represented. At the conference, the conference attorney directed that respondent

(appellee below) file a motion for summary affirmance after appellant's brief is filed and that petitioner (appellant below) file appellant's brief on or before December 28, 1984. (Appendix B, pp. B2, B3)

Petitioner filed a motion for reconsideration of the order of the conference attorney. (Appendix D, pp. D1, D2)

In the motion, petitioner contended that the order violated his right to a fair hearing since said order involved a decision that petitioner's case presented no substantial issue (see Rule 16(1)(c), rules of the supreme court of the U. S. and Hodges v. Snyder (1923) 261 U. S. 600, 67 L. Ed. 819, 43 S. Ct. 435) which decision was made prior to the time petitioner had received a full and fair hearing regarding the issues of his case.

By an order of December 14, 1984, a single judge of the court of appeals denied petitioner's motion for reconsid-

eration. (Appendix B, p. B4)

Petitioner contends that the order directing respondent to file a motion for summary affirmance entered prior to the time appellant's brief was filed (appellant's brief was filed December 21, 1984) violated petitioner's right to a fair hearing.

In Honeyman v. Hanan (1937) 302 U. S. 375, 82 L. Ed. 312, 58 S. Ct. 273, at 302 U. S. 378, the court said:

> "The Federal Constitution does not undertake to control the power of a State to determine by what process legal rights may be asserted or legal obligations be enforced, provided the method of procedure gives reasonable notice and affords fair opportunity to be heard before the issues are decided."

The same rule is applicable to the federal government under the fifth amendment, U. S. Constitution.

Petitioner contends that he would have received a fair hearing only if

appellant's brief had been filed and considered by the court prior to the order directing respondent to file a motion for summary affirmance since said order involved a decision that petitioner's case presented no substantial issue.

2. The order of the court below affirming the judgment of the district court dismissing petitioner's complaint, which complaint sought a declaration regarding the federal question of whether a direct right of suit exists to enforce the right to work and earn a living given by the 14th amendment, U. S. Constitution, conflicts with the decisions of the U. S. supreme court in Davis v. Passman (1979) 442 U. S. 228, 60 L. Ed.2d 846, 99 S. Ct. 2264 and Supreme Court of Virginia v. Consumers Union of U. S., Inc. (1980) 446 U. S. 719, 64 L. Ed.2d 641, 100 S. Ct. 1967 and Public Utilities Commission of California v. United States (1958) 355

U. S. 534, 2 L. Ed.2d 470, 78 S. Ct. 446 and In Re Griffiths (1973) 413 U. S. 717, 37 L. Ed.2d 910, 93 S. Ct. 2851.

A. The order of the court below conflicts with Davis v. Passman (1979) 442 U. S. 228, 60 L. Ed.2d 846, 99 S. Ct. 2264.

The case in district court was decided on a motion to dismiss. The rule applicable to a motion to dismiss is set forth in Miree v. DeKalb County (1977) 433 U. S. 25, 53 L. Ed.2d 557, 97 S. Ct. 2490 at 433 U. S. 27:

> "In reviewing the sufficiency of a complaint in the context of a motion to dismiss we, of course, treat all of the well-pleaded allegations of the complaint as true."

In the case of Hishon v. King & Spalding (1984) 104 S. Ct. 2229, _____ U. S. _____, _____L. Ed.2d_____ at 104 S. Ct. 2233, the rule is again stated:

"At this stage of the litigation, we must accept petitioner's allegations as true. A court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Conley v. Gibson, 355 U. S. 41, 45-46 (1957)."

Pursuant to the above rule, each of the allegations of petitioner's complaint must be taken as true for the purpose of the motion to dismiss.

Petitioner, in paragraph 5 of the complaint (supra, p. 6), alleges that he is prevented from bringing a certain type of lawsuit, sought to be adjudged constitutional by the complaint, by a decision of the Washington supreme court holding that such type suit is not maintainable.

Under this allegation, petitioner is free to show that the type of lawsuit, sought to be adjudged constitutional by the complaint, can only be brought by an

EDITOR'S NOTE

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active member of the Washington state bar association (only an active member of the bar could sue for a job as a practicing attorney) and that petitioner, an inactive member of the bar association (paragraph 2 of complaint, supra, p. 6), has been unable to regain active status without the type of suit, sought to be adjudged constitutional by the complaint, first being authorized.

In paragraph 6 of the complaint (supra, p. 6), petitioner alleges that respondent administers the decision of the Washington supreme court referred to in paragraph 5 of the complaint.

Under this allegation, petitioner is free to show that respondent has refused to readmit petitioner to active status until the type of suit, sought to be adjudged constitutional by the complaint, is first authorized. Petitioner is further free to show that respondent would be

bound by a declaratory judgment authorizing the type of suit sought to be adjudged constitutional and would be bound to readmit petitioner, upon application, to the active roll of attorneys of the state of Washington. Petitioner is further free to show that, as an active member of the bar association, he would be free to bring the type of suit sought to be adjudged constitutional by the complaint.

Presented for review is the question whether the allegations of the complaint, taken as true, allege a case or controversy between the parties.

Petitioner contends that Davis v. Passman 442 U. S. 228, supra, holds that the type of allegations set forth in petitioner's complaint do constitute a case or controversy between the parties.

In Davis v. Passman, plaintiff Davis brought suit in U. S. district court under the fifth amendment seeking damages in the

form of backpay and reinstatement, contending she had been illegally discharged as an employee by Mr. Passman, a U. S. congressman. (The claim for reinstatement was not available at time of suit as Mr. Passman was defeated for re-election.)

The district court dismissed the complaint and the court of appeals affirmed, holding that no right of action could be implied from the due process clause of the fifth amendment.

The U. S. supreme court reversed, holding that a cause of action could be implied under the fifth amendment.

With reference to the requirement of a case or controversy, the court, at 442 U. S. 239, 240, footnote 18, said:

> ".....standing is a question of whether a plaintiff is sufficiently adversary to a defendant to create an Art. III case or controversy,
> .....
> .....The Court of Appeals appeared

to confuse the question of whether petitioner had standing with the question of whether she had asserted a proper cause of action. (citation omitted) Although the court acknowledged the existence of petitioner's constitutional right, 571 F.2d, at 797-798, it concluded that she had no cause of action in part because 'the injury alleged here does not infringe this right as directly as the injury inflicted in the unreasonable search of Webster Bivens offended the fourth amendment.' Id., at 797. The nature of petitioner's injury, however, is relevant to the determination of whether she has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.' (Citations omitted) And under the criteria we have set out, petitioner clearly has standing to bring this suit. If the allegations of her complaint are taken to be true, she has shown that she 'personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant.'....."

By his complaint, petitioner has alleged that he is prevented by respondent from bringing a suit to directly enforce the right to work and earn a living given

by the 14th amendment, U. S. Constitution.

Petitioner contends that the order of the court below, holding that petitioner's complaint did not state a case or controversy between the parties, conflicts with Davis v. Passman, 442 U. S. 228, supra, which held that an implied right of suit did exist to enforce the right to work and earn a living granted by the fifth amendment, U. S. Constitution and which, therefore, also held that an allegation by petitioner that he is prevented by respondent from bringing a suit to directly enforce the right to earn a living given by the Constitution would satisfy the criteria set forth is Davis v. Passman for establishing standing (case or controversy).

This allegation by petitioner suffices to show that petitioner has "'alleged such a personal stake in the outcome of the controversy as to assure that concrete

adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.'" Davis v. Passman, 442 U. S. at 240, footnote 18.

This allegation also shows that petitioner "'personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant.'" Id., at 240, footnote 18.

Thusly, petitioner in his complaint has alleged that he is prevented by respondent from bringing a type of suit which is authorized by Davis v. Passman, supra.

As shown earlier, Davis v. Passman involved a direct suit to enforce the fifth amendment.

> "The restraints of the Fifth Amendment reach far enough to embrace the official actions of a Congressman in hiring and dismissing his

employees....." 442 U. S. at 236, footnote 12.

As shown earlier, Davis v. Passman involved a suit to directly enforce the right to work and earn a living granted by the fifth amendment.

In her complaint, plaintiff Davis alleged that she had been wrongfully discharged from her employment because of her sex. (The allegations of her complaint were taken as true for the purpose of the motion to dismiss).

In the case, the court, in holding that a direct right of suit exists under the fifth amendment, explains the basis for the enforcement of constitutional rights as distinguished from statutory rights, making it abundantly clear that constitutional rights are to be enforced by the courts.

At 442 U. S. 241, the court said:

"This was error, for the question of

who may enforce a statutory right is fundamentally different from the question of who may enforce a right that is protected by the Constitution.

Statutory rights and obligations are established by Congress, and it is entirely appropriate for Congress, in creating these rights and obligations, to determine in addition who may enforce them and in what manner.....
.....

The Constitution, on the other hand, does not 'partake of the prolixity of a legal code.' McCulloch v. Maryland, 4 Wheat. 316, 407 (1819). It speaks instead with a majestic simplicity. One of 'its important objects,' ibid., is the designation of rights. And in 'its great outlines,' ibid., the judiciary is clearly discernible as the primary means through which these rights may be enforced. As James Madison stated when he presented the Bill of Rights to the Congress:

> 'If (these rights) are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the Legislative or Executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the

declaration of rights.' 1 Annals of Cong. 439 (1789). At least in the absence of 'a textually demonstrable constitutional commitment of (an) issue to a coordinate political department,' Baker v. Carr, 369 U. S. 186, 217 (1962), we presume that justiciable constitutional rights are to be enforced through the courts. And, unless such rights are to become merely precatory, the class of those litigants who allege that their own constitutional rights have been violated, and who at the same time have no effective means other than the judiciary to enforce these rights, must be able to invoke the existing jurisdiction of the courts for the protection of their justiciable constitutional rights. 'The very essence of civil liberty,' wrote Mr. Chief Justice Marshall in Marbury v. Madison, 1 Cranch 137, 163 (1803), 'certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.'"

Petitioner contends that Davis v. Passman, supra, which involved the right of direct suit to enforce the fifth amendment, is authority that a direct

right of suit exists to enforce the right to work and earn a living granted by the 14th amendment, U. S. Constitution.

By his complaint, petitioner sought a declaratory judgment adjudging that an attorney, admitted to the practice of law in the state of Washington, whose application for employment to a financially qualified employer has been rejected by said employer, can, under the 14th amendment, sue said employer to obtain a job.

The right to work and earn a living is granted by the 14th amendment and the right is protected by the amendment from state invasion. In Re Griffiths (1973) 413 U. S. 717, 37 L. Ed.2d 910, 93 S. Ct 2851.

In In Re Griffiths at 413 U. S. 720, the court said:

> "' It requires no argument to show that the right to work for a living in the common occupations

of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the (Fourteenth) Amendment to secure.'"

The right to practice law is protected by the 14th amendment, U. S. Constitution. In Re Griffiths, supra.

The basis of petitioner's complaint for declaratory judgment is that, unless the attorney's right to work and earn a living is enforceable in court, the right is merely precatory, the attorney having no effective means of enforcing the right.

> ".....we presume that justiciable constitutional rights are to be enforced through the courts. And, unless such rights are to become merely precatory, the class of those litigants who allege that their own constitutional rights have been violated, and who at the same time have no effective means other than the judiciary to enforce these rights, must be able to invoke the existing jurisdiction of the courts for the protection of their justiciable constitutional rights." Davis v. Passman, supra, at 442 U. S. 242.

Therefore, petitioner contends, a cause of action can be directly implied under the 14th amendment, U. S. Constitution, allowing an attorney, whose application for employment to a financially qualified employer has been rejected, to sue said employer to obtain a job.

> "She claims that her rights under the Amendment have been violated, and that she has no effective means other than the judiciary to vindicate these rights. (footnote omitted) We conclude, therefore, that she is an appropriate party to invoke the general federal-question jurisdiction of the District Court to seek relief. She has a cause of action under the Fifth Amendment. (footnote omitted)" Davis v. Passman, supra, at 442 U. S. 243.

Petitioner contends that Davis v. Passman, supra, which upheld the direct right of suit to enforce the right to work and earn a living under the fifth amendment, is authority that an implied right of suit exists to enforce the right to work and earn a living given by the 14th amendment.

In so holding, petitioner contends, the case also held that the allegation of petitioner's complaint that he is prevented by respondent from bringing this type of suit alleges a case or controversy between the parties within the criteria for standing (case or controversy) set forth in Davis v. Passman, supra.

Therefore, the order of the court below, which held that petitioner's complaint did not state a case or controversy between the parties, conflicts with Davis v. Passman (1979) 442 U. S. 228, 60 L. Ed.2d 846, 99 S. Ct. 2264.

B. The order of the court below conflicts with Supreme Court of Virginia v. Consumers Union of U. S., Inc. (1980) 446 U. S. 719, 64 L. Ed.2d 641, 100 S. Ct. 1967.

In Supreme Court of Virginia v. Consumers Union of U. S., Inc., supra,

the Consumers Union brought suit in U. S. district court against the Virginia supreme court and the Virginia state bar seeking a declaration that a disciplinary rule promulgated by the Virginia supreme court regulating advertising by attorneys was unconstitutional.

In holding the rule unconstitutional, it was held that, since the Virginia supreme court had independent authority under the rules to enforce the disciplinary rule, a case or controversy was presented against the supreme court as well as against the state bar, which also had enforcement authority.

Petitioner's complaint here presents a similar situation. In the complaint, he seeks a declaratory judgment that an implied right of suit exists under the 14th amendment to enforce an attorney's right to work and earn a living. He further alleges that he is prevented from

bringing this type suit by a decision of the Washington state supreme court, holding that such type suit is not maintainable, which decision is administered by respondent. (Plaintiff's Complaint for Declaratory Judgment, supra, pp. 6, 7)

Under these allegations, petitioner is free to show that respondent has denied petitioner, an inactive member of the Washington bar association, readmission to the active roll of attorneys until the type of suit, sought to be adjudged constitutional by petitioner's complaint for declaratory judgment, is authorized. Only an active member of the bar association could sue to obtain a job as a practicing attorney.

Under the allegations, petitioner is further free to show that respondent would be bound by a declaratory judgment authorizing the type of suit sought to be adjudged constitutional and would then be

bound to readmit petitioner, upon application, to active status. As an active member, petitioner would then be free to bring the type of suit sought to be authorized.

Thus, in Supreme Court of Virginia v. Consumers Union of U. S., Inc., supra, the Consumers Union sought a declaration that a disciplinary rule promulgated by the Virginia supreme court was unconstitutional, suit being brought in U. S. district court.

Here, petitioner sought in U. S. district court a declaration that a type of lawsuit, held to be non-maintainable by a decision of the Washington supreme court, is authorized under the U. S. Constitution.

In Supreme Court of Virginia, supra, it was held, that since the Virginia state bar enforced the disciplinary rule, a case or controversy was presented against the state bar.

Petitioner contends, under the holding

of Supreme Court of Virginia v. Consumers Union of U. S., Inc., since respondent, in administering the decision of the Washington supreme court, has denied petitioner readmission to active status, a case of controversy is presented against respondent.

Therefore, the order of the court below, which held that petitioner's complaint did not state a case or controversy between the parties, conflicts with Supreme Court of Virginia v. Consumers Union of U. S., Inc. (1980) 446 U. S. 719, 64 L. Ed.2d 641, 100 S. Ct. 1967.

C. The order of the court below conflicts with Public Utilities Commission of California v. United States (1958) 355 U. S. 534, 2 L. Ed.2d 470, 78 S. Ct. 446.

In this case, at 355 U. S. 536, 538, 539, the court said:

"The United States filed this

suit for declaratory relief, 28 U. S. C. #2201, in a three-judge District Court, asking that #530 be declared unconstitutional insofar as it prohibits carriers from transporting government property at rates other than those approved by the Commission and requesting relief by injunction.

The District Court rendered judgment for the United States,

.....

We are met at the outset with a contention that there is no 'actual controversy' between the United States and the Commission within the meaning of 28 U. S. C. #2201. If so, there is a fatal constitutional, as well as statutory, defect because of the manner in which the judicial power is defined by Art. III, #2, cl. 1, of the Constitution. See Aetna Life Ins. Co. v. Haworth, 300 U. S. 227. The argument is that there is no allegation that the Commission had done or had threatened to do anything adverse to the United States or its agent.....

.....

The Commission has plainly indicated an intent to enforce the Act; and prohibition of the statute is so broad as to deny the United States the right to ship at reduced rates, unless the Commission first gives its approval. The case is, therefore, quite different from Public Service Comm'n v. Wycoff Co., 344 U. S. 237, where a carrier sought relief in a federal court

> against a state commission in order 'to guard against the possibility,' id., at 244, that the Commission would assume jurisdiction. Here the statute limits transportation at reduced rates unless the Commission first gives approval. The controversy is present and concrete--whether the United States has the right to obtain transportation service at such rates as it may negotiate or whether it can do so only with state approval."

Thus, in Public Utilities Commission of California v. United States, it was held that, since the California statute presently prevented the United States from shipping at reduced rates without first obtaining state approval, a controversy was presented.

Here, petitioner's complaint alleges that he is presently prevented from bringing a suit, sought to be adjudged constitutional by the complaint for declaratory judgment, by a decision of the Washington supreme court which is administered by respondent. (Plaintiff's

Complaint for Declaratory Judgment, supra, pp. 6, 7)

Thus, petitioner's complaint alleges that he is presently prevented by respondent from bringing the desired suit.

Under the holding of Public Utilities Commission of California v. United States, supra, petitioner contends that his complaint alleges a case or controversy between the parties.

Therefore, the order of the court below conflicts with Public Utilities Commission of California v. United States (1958) 355 U. S. 534, 2 L. Ed.2d 470, 78 S. Ct. 446.

D. The order of the court below conflicts with In Re Griffiths (1973) 413 U. S. 717, 37 L. Ed.2d 910, 93 S. Ct. 2851.

In In Re Griffiths, the court held that the right to practice law under the 14th Amendment, U. S. Constitution, is

enforceable in court against state interference.

Here, petitioner by his complaint sought a declaratory judgment declaring that an attorney's right to practice law under the 14th amendment is enforceable in court, free from state hindrance.

Under the holding of In Re Griffiths, petitioner contends that his complaint alleges a case or controversy between the parties.

Therefore, the order of the court below conflicts with In Re Griffiths (1973) 413 U. S. 717, 37 L. Ed.2d 910, 93 S. Ct. 2851.

Gordon Campbell, Petitioner

APPENDIX A

United States Court of Appeals for the Ninth Circuit

Gordon Campbell, Plaintiff-Appellant, vs. Washington State Bar Association, defendant-appellee.

No. 84-4232 DC# CV-84-825 DSV Western Washington (Seattle)

Order

Before: Wallace, Fletcher and Wiggins, Circuit Judges

The court has considered Gordon Campbell's brief and the record in this case. Campbell's contentions are frivolous, and the district court properly dismissed the action for lack of subject matter jurisdiction. See 28 U. S. C. #2201. We summarily affirm the district court's judgment. See Supreme Court Rule (16)(1)(c); Ninth Cir. R. 5; Page v. United States, 356 F.2d 337, 339 n. 1 (9th Cir. 1966); Fed. R. App. P. 2. MoCal 2/4/85

APPENDIX B

United States District Court Western District of Washington

Gordon Campbell, Plaintiff, vs. Washington State Bar Association, Defendant.

No. C84-825V

Order

Having considered the motion of defendant for dismissal of plaintiff's action for declaratory judgment, together with the memoranda submitted by counsel, the court now finds and rules as follows:

1. Plaintiff seeks a declaratory judgment to the effect that an attorney may maintain an action against a potential employer who has refused to hire the attorney even though the employer is financially able to do so.

2. Under Article III of the United States Constitution and 28 U. S. C. Section 2201, this court has jurisdiction to

entertain an action only if it presents an actual controversy between the parties. Plaintiff had failed to allege a controversy between himself and the defendant. His complaint must therefore be dismissed.

Accordingly, the motion of defendant Washington state bar association to dismiss plaintiff's action is granted.

The clerk of this court is instructed to send uncertified copies of this order to all counsel of record.

Dated this 10th day of September, 1984.

Donald S. Voorhees
United States District Judge

Entered September 12, 1984

United States Court of Appeals for the Ninth Circuit
Gordon Campbell, Plaintiff-Appellant, vs. Washington State Bar Association, defendant-appellee.
No. 84-4232 DC# CV-84-825 DSV Western

Washington (Seattle)

Order

On November 16, 1984, a prebriefing conference was held before conference attorney Norman P. Vance. Appellant, Gordon Campbell, represented himself. Appellee was represented by Lydia Gold.

(1) Appellant shall file his opening brief on or before December 28, 1984.

(2) Appellee will file a motion for summary affirmance after appellant's opening brief is filed.

This order is subject to reconsideration by a judge if any objection is filed within 10 days of the entry of the order.

For the court:

Norman P. Vance

Norman P. Vance

Conference Attorney

Entered November 29, 1984

United States Court of Appeals for the
Ninth circuit

Gordon Campbell, Plaintiff-Appellant, vs. Washington state bar association, defendant-appellee.

No. 84-4232 DC# CV-84-825-V Western Washington (Seattle)

Order

Before: Anderson, Circuit Judge

Appellant's motion for reconsideration of the court's order of November 29, 1984, is denied.

J. Blaine Anderson

United States Circuit Judge

Entered December 14, 1984

APPENDIX C

Judgment

United States Court of Appeals for the ninth circuit

Gordon Campbell, Plaintiff-appellant, vs. Washington State bar association, defendant-appellee.

No. 84-4232 DC# CV 84-825 V

Appeal from the United States district court for the western district of Washington (Seattle)

This cause came on to be heard on the transcript of the record from the United States district court for the western district of Washington (Seattle) and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said district court in this cause be, and hereby is summarily affirmed. Entered March 11, 1985

APPENDIX D

United States court of appeals for the ninth circuit

Gordon Campbell, Plaintiff-appellant v. Washington state bar association, defendant-appellee

No. 84-4232

Motion for reconsideration of order

Plaintiff moves the court to reconsider the order filed in the above-entitled proceeding on November 29, 1984. The order followed the prebriefing conference held November 16, 1984.

Plaintiff objects to the portion of the order reading as follows:

"(2) Appellee will file a motion for summary affirmance after appellant's opening brief is filed."

Plaintiff contends that this portion of the order violates his right to a fair

hearing which is granted by the due process clause of the 14th amendment, U. S. Constitution.

Plaintiff contends that this portion of the order violates his right to a fair hearing because said portion is a decision that the issues of the case are unsubstantial (see Rule 16(1)(c), rules of the supreme court of the U. S.) without plaintiff first receiving a full and fair hearing regarding the issues of his case.

Therefore, plaintiff requests that this portion of the order be stricken.

Dated this 4th day of December, 1984.

Gordon Campbell Plaintiff
1631 Belmont Avenue Apt. 208
Seattle, WA 98122

Office-Supreme Court, U.S.
FILED
MAY 28 1985
ALEXANDER L. STEVAS,
CLERK

NO. 84-1665

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

GORDON CAMPBELL, PETITIONER

v.

WASHINGTON STATE BAR ASSOCIATION,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Robert T. Farrell
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Seattle, WA 98104
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Counsel for respondent
Washington State Bar
Association

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COUNTERSTATEMENT OF THE CASE

This is Gordon Campbell's fifth petition for writ of certiorari to this Court. In 1968, Campbell was involuntarily transferred to inactive status as an attorney in the State of Washington, by order of the Washington Supreme Court finding him mentally incompetent. See In re Campbell, 74 Wash.2d 276, 444 P.2d 784 (1968). Mr. Campbell's request for review by this Court was denied. Campbell v. Washington State Bar Association, 394 U.S. 323, 89 S.Ct. 1207, 22 L.Ed.2d 310 (1969).

Eleven years later, Mr. Campbell's request for reinstatement was denied by the Bar's Disciplinary Board, since there was no allegation that his mental status had changed. This Court denied certiorari. Campbell v. Disciplinary Board, 444 U.S. 1080, 100 S.Ct. 1032, 62 L.Ed.2d 763 (1980).

Mr. Campbell then filed a complaint in

United States District Court, claiming that the Washington State Bar Association had interfered with his right to obtain recognition for his discovery that the air is alive. The District Court granted the Bar Association's Motion for Summary Judgment. Mr. Campbell appealed that judgment to the Ninth Circuit. Before the circuit court's decision was reached, Mr. Campbell filed his third petition for writ of certiorari with this Court, which was denied. Campbell v. Washington State Bar Association, 454 U.S. 1098, 102 S.Ct. 672, 70 L.Ed.2d 640 (1981).

In 1982, the Ninth Circuit affirmed the District Court's judgment. Mr. Campbell then filed his fourth petition with this Court, raising the same issues. That writ was denied in 1983. Campbell v. Washington State Bar Association, 459 U.S. 1206, 103 S.Ct. 1195, ___ L.Ed.2d ___ (1983).

The present matter followed, when Mr. Campbell filed another action in District Court, seeking a declaratory judgment that an attorney admitted to practice may sue an employer who is "financially qualified" but who rejects his application for employment, under the Fourteenth Amendment to the United States Constitution. For reasons which are unclear, he named the Washington State Bar Association as the defendant.

The District Court granted the Bar Association's Motion to Dismiss, finding that Mr. Campbell had failed to allege a case or controversy between himself and the Bar Association. Mr. Campbell then appealed to the Ninth Circuit, which summarily affirmed the District Court's judgment, finding that Mr. Campbell's contentions were frivolous and that the action was properly dismissed for lack of subject matter jurisdiction. Mr. Campbell then

filed his fifth petition for writ of certiorari with this Court.

ARGUMENT

No important question of federal law has been raised which should be settled by this Court.

Mr. Campbell is asking this Court to address a hypothetical question about whether attorneys have a constitutional right to be employed and whether persons must employ them if they are financially able to do so. As the Bar Association's Counterstatement of the Case indicates, this is not the first time that Mr. Campbell has brought that hypothetical question to the attention of the courts. But courts will not consider abstract or hypothetical questions such as the one raised here. O'Shea v. Littleton, 414 U.S. 495, 94 S.Ct. 669, 39 L.Ed.2d 674 (1974); American Cyanamid v. Ethicon, Inc., 443 F.Supp. 46 (S.D.N.Y. 1977). In

fact, Mr. Campbell's claim that attorneys have a constitutional right to a job is totally frivolous and absolutely without merit.

The other issue raised by Mr. Campbell - that he was denied due process when the Ninth Circuit conference attorney suggested that the Bar Association file a motion for summary affirmance after Mr. Campbell filed his opening brief - is also without merit. It is apparent after reading the order entered in this case by the Ninth Circuit that the three circuit judges who considered Mr. Campbell's case had read the record and considered his complaint to be frivolous and properly dismissed for lack of subject matter jurisdiction.

CONCLUSION

Since Mr. Campbell has failed to raise an important question of federal law which

should be settled by this Court, his petition for certiorari should be denied.

Respectfully submitted,

Robert T. Farrell
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Office Supreme Court, U.S.
FILED
JUN 3 1985

NO. 84-1665

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1984

GORDON CAMPBELL, PETITIONER

V.

WASHINGTON STATE BAR ASSOCIATION,

RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Gordon Campbell,
Petitioner
1631 Belmont Avenue
#208
Seattle, WA 98122

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ARGUMENT

1. Reference is made in respondent's brief in opposition (p. 1) to In re Campbell (1968) 74 Wn2d 276, 444 P.2d 784. It should be noted that the sole basis of the decision in said case is that an attorney, admitted to the practice of law in the state of Washington, cannot bring the type of suit sought to be adjudged constitutional by petitioner's complaint for declaratory judgment herein.

2. Reference is made by respondent to prior petitions for writs of certiorari by petitioner. Since a denial of certiorari is not an expression by the court on the merits, it is evident that petitioner is still seeking to obtain review from the U. S. Supreme court on the important federal question of whether an attorney can enforce his right to work and earn a living by suit.

The 1980 petition for a writ of certiorari involved the question of whether the right to a job is a national political issue involving national legislation, with large groups of people on both sides of the issue, with lawsuits on either side of the issue transcending the range of professional ethics. National Association for the Advancement of Colored People v. Button (1963) 371 U. S. 415, 9 L. Ed.2d 405, 83 S. Ct. 328.

The petition also involved the question of whether an implied right of suit exists to enforce the right to a job under the Full employment and balanced growth act of 1978, which act made statutory the right of every American to a job.

Petitioner's present petition is based upon Davis v. Passman (1979) 442 U. S. 228, 60 L. Ed.2d 846, 99 S. Ct. 2264 upholding the direct right of suit

to enforce the right to work and earn a living under the fifth amendment, petitioner seeking a declaration that a direct right of suit exists to enforce an attorney's right to work and earn a living under the 14th Amendment.

3. Two of the petitions for writs of certiorari (1981 and 1983) referred to by respondent involved a suit for damages arising out of a discovery unrelated to the subject of the present petition.

Gordon Campbell, Petitioner